



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: American Federal Contractor, Inc.  
File: B-222526  
Date: July 25, 1986

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### DIGEST

1. A surety must disclose all outstanding obligations, regardless of the actual risk of liability on them. Moreover, for payment and performance bonds, obligation does not end on contract completion date, but continues until warranty period has expired.
2. Where a bidder's individual surety fails to disclose an outstanding obligation, either pending completion of performance on a contract or during a warranty period, the agency properly may find the bidder to be nonresponsible, based on its surety's nondisclosure.
3. A determination that a small business concern is nonresponsible, based on the failure of its surety to disclose an outstanding obligation, need not be referred to the Small Business Administration for consideration under its Certificate of Competency procedures.

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### DECISION

American Federal Contractor, Inc. protests its rejection as nonresponsible due to the failure of an individual surety to disclose other obligations in connection with invitation for bids (IFB) No. N62467-84-B-0930. The Department of the Navy issued the IFB as a small business set-aside, seeking a Damage Control Trainer for the Armed Forces Reserve Center, Oklahoma City, Oklahoma.

We deny the protest.

Bidders were required to submit bid bonds equal to 20 percent of their bid prices. Because the protester was bonded by two individual sureties, rather than a corporate surety, a completed Affidavit of Individual Surety (Standard Form 28) for each was required. Item 10 of the Affidavit

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required the individual sureties to disclose all other bids on which they were obligated at the time they executed the bid bond for American.

American submitted the apparent low bid at opening on March 4, 1986. Both of the firm's individual sureties, in response to Item 10 of the Affidavit, stated that they had no outstanding bond obligations. However, the Navy, in its review of the sureties, discovered that one of the individuals also appeared as surety on performance and payment bonds for contract No. N62467-85-C-7756, covering repair of a basketball court at the Naval Air Station in Kingsville, Texas. Accordingly, by letter dated April 18, 1986, the Navy notified the protester that its bid had been rejected in accord with the Federal Acquisition Regulation (FAR), § 14.404-2(i) (1984). The contracting officer stated that the surety's failure to disclose this other obligation made it impossible to determine its acceptability as an individual surety and rendered American's bid inadequate.

The protester alleges that all work on the Kingsville contract had been completed by September 21, 1985. The Navy disagrees, and has submitted for the record documents showing that due to a dispute over the painting of lines on the basketball court, which was not completed until April 27, 1986, the government did not establish beneficial occupancy until May 2, 1986. The Navy is assessing liquidated damages in the amount of \$2,680 because of American's failure to meet the contract completion date.


American responds that the Navy acted in bad faith in its administration of the Kingsville contract, and that by listing an obligation on that contract, its surety "would have been condoning the Navy's incompetent administration."

Notwithstanding the dispute, the contract on which the surety had executed the payment and performance bonds was subject to a warranty which extended for 1 year beyond the completion or acceptance of the work. The obligation of the surety remained outstanding until the expiration of the warranty. Sureties are specifically placed on notice of this continuing obligation by the terms of the Performance Bond (Standard Form 25). See Singleton Contracting Corp., B-216536, Feb. 25, 1985, 85-1 CPD ¶ 355. Thus, even if we accept the protester's completion date of September 21, 1985, the surety would have been obligated on the Kingsville contract until September 21, 1986, approximately 6 months after bid opening date for the protested contract.

A surety must disclose all outstanding bond obligations, regardless of the actual risk of liability on those obligations, to enable a contracting officer to make an informed determination of the surety's financial soundness. Dan's Janitorial Services, Inc., 61 Comp. Gen. 592 (1982), 82-2 CPD ¶ 217. Under the FAR, 48 C.F.R. § 28.202-2(a), the contracting officer must consider the outstanding obligations of an individual surety when determining surety acceptability. Item 10 of the Affidavit requires the surety to list "all other bonds on which [he is] surety" and clearly indicates the duty of the surety to disclose all such obligations, without exception. Singleton Contracting Corp., *supra*. The contracting officer may consider a surety's failure to disclose fully all outstanding obligations as a factor in a responsibility determination. Norse Construction, Inc., B-216978, Feb. 25, 1985, 85-1 CPD ¶ 232. Further, determinations of nonresponsibility based on the inadequacy of individual sureties need not be referred to the Small Business Administration for consideration under its Certificate of Competency procedures, even if, as here, the bidder is a small business. Consolidated Marketing Network, Inc., Request for Reconsideration, B-218104.2, June 12, 1985, 85-1 CPD ¶ 675; Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581.

We conclude that American's surety was required to disclose its obligations under the Kingsville contract. While the protester now asserts that its surety has no other outstanding obligations, the contracting officer was aware of at least the disputed one because both procurements were by the same command, and, since he had no way of knowing whether the surety had other obligations, also undisclosed, that exceeded the assets listed in the bid bond, could properly be concerned about the net worth of the surety. We therefore find that the Navy properly rejected the bid in accord with FAR, 48 C.F.R. § 14.404-2(1), which states that a bid shall be rejected if the bid guarantee does not conform to the requirements of the IFB.

The protest is denied.

*for*   
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General Counsel